office found, and vested nothing in the state. Failure of ownership is a fact to be established. It is "most unusual, not to say unnatural, that there shall live a person who does not have some heir, living at the time of his death, capable of inheriting his property." There is, therefore, a very strong presumption against escheat, and the state has no purpose to take property unless all heirs fail. *State* v. *Williams,* 99 Miss. 293, Ann. Cas. 1913 E 381, note; 3 Washburn Real Property, Section 1869 (6th Ed.). This presumption is sometimes changed by statute, Mich. C. L. 329, but in suing to declare lands escheated the state must rely on the strength of its own title, and not on the weakness of the contestant's. *State* v. *Williams, supra.* Under a mortmain statute one in good faith buying of a corporation land which it might not own, and which the state on office found might have forfeited on a judgment declaring escheat, acquires a title indefeasible against the state and all others. *Louisville School Board* v. *King,* 127 Ky. 824. Indeed, it was held in that case that it would be unconstitutional for the legislature to vest title *ipso facto* in the state, and deny an adverse claimant a chance to resist escheat, and it is believed the same things would apply to the *Delaney case* in which plaintiffs sought to contest the finding that there were no heirs. After office found as provided by statute there seems no reason why the title of the state to property acquired by escheat should not be as secure as that of a distribute under ordinary probate proceedings. In neither case is the probate court the usual court of final resort to try out the rights of respective claimants. *Delaney* v. *State, supra; In re McClellan's Estate,* 27 S. Dak. 109, Ann. Cas. 1913 C 1029. After final proceedings in the probate court the escheat is in suspense pending inquest of office and decree of escheat as provided in the statute governing escheats. *Estate of Miner,* 143 Cal. 194.

E. C. G.

ACCIDENT INSURANCE—INTERPRETATION OF WORD "IMMEDIATELY."—One of the common clauses in accident insurance policies is one providing that the insured shall receive a specified sum of money per week for "loss of time" resulting from injuries due to "external, violent and accidental means" which shall "independently of all other causes, immediately, wholly and continuously disable the insured from transacting any and every kind of business pertaining to his occupation." A considerable amount of litigation has involved the interpretation of the various words and phrases in such a clause. On the interpretation of "total disability" see 4 HARV. L. REV. 176. Concerning the scope of "external, violent and accidental means" see 14 MICH. L. REV. 329. It is proposed to consider briefly in this note the word "immediately."

In two jurisdictions, the word "immediately," when used in clauses as indicated above, has been held to be a word of causation, and synonymous with the phrase "independently of all other causes;" or, at least (said the courts), the presence of the said phrase and the word "immediately" in the same clause, rendered the said word ambiguous, and therefore, since all ambiguities should be construed favorably to the insured, the plaintiff was entitled to recover. *Shera* v. *Ocean Accident Corporation,* 32 Ont. Rep. 411;

Pac. Mut. Life Ins. Co. v. *Branham,* 34 Ind. App. 243. On the contrary, all other courts which have passed upon the question have held that when both the said phrase and the said word were used in such a clause, there was clearly no ambiguity, but the phrase "independently of all other causes" referred to causation, and "immediately" was used to designate proximity of time between the accident and the disability. See especially *Merrill* v. *Travelers' Co.,* 91 Wis. 329; *Williams* v. *Preferred Mutual,* 91 Ga. 698.

Assuming that "immediately" is used in such clauses as an adverb of time, the question arises, how much time? The Kansas Court in a recent decision (*Erickson* v. *Order of United Commercial Travelers,* 103 Kans. 831) following its own precedent (*Order of United Commercial Travelers* v. *Barnes,* 72 Kans. 293), held that the word means "within such a time as the processes of nature consume in bringing the person affected to a state of total disability." Hence, a baseball pitcher who was injured in September but was not disabled until the following February was held to have been "immediately" disabled. The reasons given for such decisions are that the processes of nature require time in which to operate, and the insured should not be precluded from a recovery merely because of the tardiness of nature. The practical effect of such a doctrine is to construe "immediately" as a word of causation.

In *Ritter* v. *Preferred Masonic Mutual,* 185 Pa. 90, the court laid down a different definition of "immediately," *viz.,* "within a reasonable time," and held that what is a reasonable time is a question for the court. No intimation is given in the opinion as to what matters should be considered in determining what is a "reasonable time" in such cases. It is possible to construe the decision as being equivalent to the Kansas view; but the Pennsylvania court probably did not intend such an interpretation to be put upon its decision, for it expressly concedes that the word is used in the policy to mean "instantly" or "at once," but says that, owing to the nature of the policy, there is not to be attached to the word the strict idea of instantaneously. The court held that three days was a reasonable time under the circumstances of that case.

The overwhelming weight of authority accords in holding that "immediately" means "presently, without any substantial interval of time" when used in such clauses, but such definition naturally raises the question, what constitutes such a substantial interval of time as to be beyond the meaning of the word "immediately?" The following cases held the number of days indicated to be such an interval of time: sixty-two days in *Merrill* v. *Travelers' Co., supra;* forty-two days in *Pepper* v. *Order of United Commercial Travelers,* 113 Ky. 918; thirty-six days in *Hagadorn* v. *Masonic Equitable Ass'n,* 69 N. Y. Supp. 831; thirty days in *Williams* v. *Preferred Mutual, supra;* twenty-four days in *Vess* v. *United Benevolent Society,* 120 Ga. 411; twenty-two days in *Laventhal* v. *Fidelity and Casualty Co.,* 9 Cal. App. 275; eight days in *Wall* v. *Continental Casualty Co.,* 111 Mo. App. 504; six days in *Mullins* v. *Masonic Protective Ass'n,* 181 Mo. App. 395; five days in *Preferred Masonic Mutual* v. *Jones,* 60 Ill. App. 106; two and one-half days in *Windle* v. *Empire State*

Surety Co., 151 Ill. App. 273. To appreciate fully the reasons and policy of such decisions necessitates an inquiry into the purpose of the insurer in using the word "immediately" as it did.

One of the controlling questions in actions on accident insurance policies frequently is whether or not the disability is the direct result of accident, and in cases where the disability did not have inception until a considerable period of time had elapsed after an accident, this question becomes one of acute difficulty. The insurance companies realize that, since such questions of physiological reactions are usually, if not always, decided upon the testimony of the insured and his witnesses—especially his expert witnesses—and since there exists a strong tendency on the part of juries to resolve such questions in favor of the insured, the insurer is likely to be subjected to frequent frauds and impositions at the hands of its policy holders. For these reasons, the insurance companies seek to limit their liability, under such clauses as the one now under consideration, to cases where there can be no doubt as to the causal connection between the accident and the disability. Accordingly, the provision is inserted in the policy that the disability must follow "immediately" after the injury. Clearly, such a limitation is neither unreasonable nor contrary to public policy. An insurance company has a right to be arbitrary in defining the limits of its liability, but in its effort to be arbitrary the company errs in using a term which is notoriously flexible in the law. It might better follow the precedent of the common law in limiting the liability for homicide by the "year and a day" rule, and specify that the disability must follow within twenty-four or forty-eight hours after the injury, although it must be admitted that such a provision might lessen the salability of the policy. However, the decision must be based upon the terms actually employed in the policy, but these terms should be interpreted with a view toward giving full effect to the purpose for which the insurer incorporated such ideas in the policy. The court should consider and respect the reasons and the theory upon which the insurer drafted the policy, and realize that, although the insurer might have chosen better terms to accomplish its purpose, the company has rights as well as the policy holder. On the other hand, the policy should not be so interpreted as to give the holder thereof mere illusory insurance; if his case comes justly within the terms of the policy, he should be allowed to recover. The two main questions which the court should ask itself may be stated thus: First, will a decision that the particular interim between the time of the injury and the disability in the case at bar is within the meaning of the term "immediately" adequately preclude the possibilities of fraud and imposition against which the insurer desired to protect itself, or will such a decision serve as a precedent for opening the door to just such hazards? Second, will such a decision deprive the policy holder of any benefits which he had a right to expect?

It can hardly be doubted that, if the Kansas court had properly considered these questions, especially the first one, it would not have enunciated the doctrine which it did. If the Pennsylvania court had considered said questions, it might still have been justified in announcing the rule which it did,

depending, of course, upon what the court means by a "reasonable time." The soundness of the other decisions cited can hardly be doubted, except possibly *Windle* v. *Empire State Surety Co.*, in which the court might be accused of failing to observe adequately the second question. But it would be almost unfair to criticize severely the courts for any decision in this regard not clearly absurd, for it is evident that, by the use of such word, the insurance companies have imposed upon the courts an extremely nice question, and one upon which judicial minds might reasonably differ. See 1 CORPUS JURIS 468, Section 178; COOLEY, BRIEFS ON INSURANCE, Vol. 4, p. 3168 (e); Vol. 7, p. 3168 (e); ANN. CAS. 1914 D, 380, note. L. K.

CONTINUANCE OF STATUS AS PASSENGER WHILE TRANSFERRING FROM ONE CAR TO ANOTHER.—There is a great deal of confusion in the reports as to whether a passenger on a street car, who is required to transfer to another car, is still a passenger to whom the railway company owes a high degree of care during the act of transferring. In *Feldman* v. *Chicago Railways Co.* (Ill. 1919), 124 N. E. 334, the plaintiff was walking from the northwest to the southwest corner of Twelfth Street and Cicero Avenue in transferring from one car to another; while so doing the rear end of the car from which he had just alighted swung around on a switch and struck him, knocking him down and injuring him severely. The court took the view that the relation of carrier and passenger continued while he was transferring, and held the defendant company liable. The dissenting judges pointed out that the cases cited as supporting the majority opinion were either cases of steam railways where the injured person had not left the premises of the defendants, or cases in which the plaintiff was in the act of boarding or alighting at the time he was injured.

In the case of steam railways the question seems to be settled. "The general rule is that the relation of carrier and passenger begins as soon as one intending in good faith to become a passenger enters, in a lawful manner, upon the carrier's premises to engage passage, and that relation continues to exist until the passenger has been made aware of his arrival at the place of destination and has had a reasonable time to alight from the car and to leave the premises of the carrier." *Powell* v. *Phila. & Reading Ry. Co.*, 220 Pa. St. 638. Thus, a person was held a passenger when on the depot premises for the purpose of taking a train, though he had not purchased a ticket, in *Grimes* v. *Pennsylvania Co.*, 36 Fed. 72. Likewise, where a passenger alighted at an intermediate station for the purpose of refreshment (*Watters* v. *Phila. B. & W. R. Co.*, 239 Pa. 492), of sending or receiving telegrams (*Alabama G. S. Ry. Co.* v. *Coggins*, 88 Fed. 455), of taking exercise (*Gannon* v. *C. R. I. & P. Ry. Co.*, 141 Ia. 37), of talking with an acquaintance while cars were being switched (*Ark. Cent. Rd. Co.* v. *Bennett*, 82 Ark. 393), or of engaging in an altercation with a servant of the railway company (*Layne* v. *C. & O. Ry. Co.*, 66 W. Va. 607). But where a passenger left the premises of the railroad company at an intermediate point and went to a hotel to spend the